

**United States District Court**  
EASTERN DISTRICT OF TEXAS  
SHERMAN DIVISION

**ZYWAVE, INC.,**

**Plaintiff,**

**v.**

**JUSTIN CATES, *et al.*,**

**Defendants.**

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**Case No. 4:18-CV-751-ALM-KPJ**

**MEMORANDUM ADOPTING REPORT AND  
RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE**

Came on for consideration the report of the United States Magistrate Judge in this action, this matter having been heretofore referred to the Magistrate Judge pursuant to 28 U.S.C. § 636. On February 21, 2020, the Magistrate Judge entered proposed findings of fact and recommendations (Dkt. #128) that Zywave, Inc.'s Motion and Memorandum in Support of Its Motion for Summary Judgment (Dkt. #57) be granted in part and denied in part.

Having received the Report of the United States Magistrate Judge, and no timely objections being filed, the Court is of the opinion that the findings and conclusions of the Magistrate Judge are correct and adopts the Magistrate Judge's report as the findings and conclusions of the Court.


Accordingly, Zywave, Inc.'s Motion and Memorandum in Support of Its Motion for Summary Judgment (Dkt. #57) is hereby **GRANTED IN PART and DENIED IN PART**.

The record is sufficient for the Court to consider liability in full, and to determine that Plaintiff is entitled to summary judgment as to both claims. However, with regard to a specific damages figure, the record is lacking. While Defendants contested Plaintiff's damages calculation, they did not offer an alternative damages calculation. Defendants should be afforded an

opportunity to put forward an alternative damages model and/or expert testimony. Accordingly, the Court finds the limited issue of damages will be decided by a jury.

**IT IS SO ORDERED.**

**SIGNED this 11th day of March, 2020.**

  
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AMOS L. MAZZANT  
UNITED STATES DISTRICT JUDGE